

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re I.O., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.G.,

Defendant and Appellant.

E072509

(Super.Ct.No. J268808)

OPINION

APPEAL from the Superior Court of San Bernardino County. Steven A. Mapes,
Judge. Affirmed.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and
Appellant.

Michelle D. Blakemore, County Counsel, and Svetlana Kauper, Deputy County
Counsel, for Plaintiff and Respondent.

Defendant and appellant J.G. (mother) appeals from an order terminating her parental rights over I.O., arguing that the juvenile court should have instead applied the beneficial parental relationship exception and selected legal guardianship as the permanent plan. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

In December 2016, two days before I.O.'s fifth birthday, mother, I.O., and mother's ex-boyfriend were injured in a rollover car accident. The ex-boyfriend, who was driving, had been drinking with mother. Plaintiff and respondent San Bernardino County Children and Family Services (CFS) responded to an emergency referral and arrived at the hospital. Mother stated that although she could not remember how much she had been drinking that night, "it was a lot," and that although she could recall that the ex-boyfriend was cooking food at some point, she could not recall getting into the car and did not know where they were going when they crashed. The accident ruptured I.O.'s bladder, requiring emergency surgery, caused nerve damage in his left eye, and caused him to develop "extreme fear" of riding in vehicles for some time.

CFS filed a petition pursuant to Welfare and Institutions Code¹ section 300, subdivisions (b)(1) [failure to protect] and (g) [no provision for support], and detained I.O. out of parental custody. At the jurisdiction/disposition hearing in January 2017, the juvenile court amended an allegation and dismissed another, both pursuant to the parties' agreement, and sustained the others, including one alleging mother has a substance abuse

¹ All further statutory references are to the Welfare and Institutions Code.

problem. The juvenile court declared I.O. a dependent of the court, ordered him removed from parental custody, and ordered reunification services for mother.²

During the subsequent reunification period, mother's visits with I.O. were generally positive. While early visits were reported as having only "moderate quality," later status review reports stated that the "prognosis for reunification is good," and that mother "interacts well with the child during all visitations." Mother attended I.O.'s baseball games, family gatherings, and school-related activities.

CFS expressed concern, however, about mother's progress with substance abuse rehabilitation. CFS stated in its six-month status review report that mother "has not demonstrated or provided confirmation of her attendance, participation and progress in Court Ordered Substance [A]buse Classes." In its 12-month status review report, CFS stated that mother "may have relapsed," as she did not maintain contact with CFS or her substance abuse outpatient program for an extended period. According to the 12-month status review report, on the day mother was supposed to graduate from her outpatient program, she showed up, was asked to take a drug test, did not do so, and "left the facility without notice."

At the 18-month hearing in June 2018, the juvenile court terminated reunification services but, upon finding that a section 366.26 hearing was not in I.O.'s best interests, did not order the section 366.26 hearing at that time. (See § 366.22, subd. (a)(3).) The juvenile court ordered a permanent plan of placement with Ms. S—a relative with whom

² I.O.'s father was incarcerated at the time the petition was filed, was found not entitled to reunification services, and is not a party to this appeal.

he had been residing since his original removal—with the goal of being returned home.³ Mother retained visitation rights.

In advance of a postpermanency hearing in December 2018, CFS stated in a status review report that mother had “multiple no shows with regard to random drug tests,” which CFS and the juvenile court had explained to her are deemed positive tests. From June through December 2018, mother failed to appear for five such tests. At the postpermanency hearing, the juvenile court ordered a permanent plan of adoption, found that it was in I.O.’s best interests to consider termination of parental rights at a section 366.26 hearing, and allowed visitation to continue.

In a report prepared for the section 366.26 hearing, CFS stated that when I.O. was asked how he felt about being adopted by Ms. S, “with one being ‘I don’t like it at all’ and 10 being ‘I love it,’” he “readily said a ‘10.’” The report noted that I.O. has his own bedroom at Ms. S’s home and that, “as a family” with Ms. S’s adult children and grandchildren, they would “go to Sea World, Knotts Berry Farm, have family dinners,” go to church, watch the grandchildren’s baseball games, and “[attend] professional baseball games together.” When asked how he felt about Ms. S, he responded: “‘I like her a lot and I love her.’”

Mother testified at the section 366.26 hearing in April 2019. She stated that on visits, I.O. and mother would “go to Shakey’s, Chuck-E-Cheese,” and “watch games.” When asked how I.O. shows his love toward mother, she responded: “He is just—his

³ The record variously characterizes Ms. S as I.O.’s “maternal cousin,” “paternal cousin,” and “paternal aunt.”

aunt always tells me after the visits, ‘He is so happy to see you.’ One time after the visit he went home, and he was writing. And his aunt told him, ‘Who are you writing?’ [¶] ‘To my mom and dad—how much I love them, and I can’t wait to come home,’ and she put it on the fridge.” Mother continued: “He hugs me and kisses me, or he tells me he loves me. He will text me saying, ‘I love you, Mom.’” When asked why her parental rights should not be terminated, she responded: “Because I did everything that I was asked to do. I did the program, graduated. I never gave a dirty test. My visitations were always on time.” Mother testified on cross-examination that she missed about two or three visits with I.O. in the previous six months.

Following the testimony, the juvenile court found that the “benefits of adoption clearly outweigh the benefits of maintaining the parent-child relationship.” Although it assumed for the sake of argument that mother maintained regular visitation and contact with I.O., the juvenile court viewed mother “as more of a friendly visitor” and determined that I.O. would not “suffer any detriment or very much of one at all by termination of parental rights.” Accordingly, it found that I.O. was both generally and specifically adoptable and likely to be adopted, terminated mother’s parental rights, and ordered that I.O. be placed for adoption.

II. DISCUSSION

Mother contends that the juvenile court erred by not applying the parental relationship exception. We disagree.

A. *Applicable Law*

At a section 366.26 hearing, the juvenile court selects and implements a permanent plan for a dependent child. (*In re Celine R.* (2003) 31 Cal.4th 45, 52-53.) “In order of preference the choices are: (1) terminate parental rights and order that the child be placed for adoption (the choice the court made here); (2) identify adoption as the permanent placement goal and require efforts to locate an appropriate adoptive family; (3) appoint a legal guardian; or (4) order long-term foster care.” (*Id.* at p. 53.) “Whenever the court finds ‘that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption.’” (*Ibid.*)

To avoid termination of parental rights, a parent must prove that one or more statutory exceptions apply. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395.) One such exception is the beneficial parental relationship exception set forth in section 366.26, subdivision (c)(1)(B)(i), which may apply when “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) “This exception can only be found when the parents have maintained regular visitation and contact with the child *and* the child would benefit from continuing the relationship.” (*Anthony B.*, *supra*, 239 Cal.App.4th at p. 395.) Even after a parent proves the *existence* of a beneficial parental relationship, however, the juvenile court must also find that such relationship constitutes “a compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B).)

In determining the applicability of the parental relationship exception, the court considers ““‘[t]he age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs.’”” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643.) “A showing the child derives some benefit from the relationship is not sufficient ground to depart from the statutory preference for adoption.” (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 646 (*Breanna S.*)) Furthermore, evidence of frequent and loving contact is not enough. (*Ibid.*) The parent must also show he or she occupies “‘a parental role’” in the child’s life. (*Ibid.*) “The relationship that gives rise to this exception to the statutory preference for adoption ‘characteristically aris[es] from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship.’” (*In re K.P.* (2012) 203 Cal.App.4th 614, 621.)

Our review of the juvenile court’s ruling is deferential, incorporating both the substantial evidence and abuse of discretion standards. We generally review the juvenile court’s finding as to the existence of a beneficial parental relationship for substantial evidence. (See *Breanna S.*, *supra*, 8 Cal.App.5th at p. 647.) But where the juvenile court found the parent failed to carry his or her burden of proof, the question is more properly stated not in terms of substantial evidence, but rather “whether the [appellant parent’s] evidence was (1) ‘uncontradicted and unimpeached’ and (2) ‘of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.’” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) We apply the abuse of

discretion standard to the juvenile court's determination of whether the benefit to the child from preserving parental rights is sufficiently compelling to outweigh the termination of those rights. (See *Breanna S.*, *supra*, 8 Cal.App.5th at p. 647.) We will not reverse the juvenile court's order as an abuse of discretion unless the court made an arbitrary, capricious, or patently absurd determination. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.)

B. *Analysis*

The record amply supports the juvenile court's conclusion that the beneficial parental relationship exception did not apply. Other than a status review report characterizing early visits as having only "moderate quality," it is undisputed that mother's visits with I.O. went well. And we assume for the sake of argument, as the juvenile court did, that mother maintained regular visitation and contact. Such regular and loving contact, however, is not enough to establish that mother occupied a parental role in I.O.'s life. (See *Breanna S.*, *supra*, 8 Cal.App.5th at p. 646.) Rather, since the time I.O. was initially removed, Ms. S has been his caretaker, providing for his day-to-day needs as well as a stable home environment. In addition to the activities described above, Ms. S takes I.O. to and from school, prepares his dinners, ensures that he regularly gets medical care, gives him the opportunity to play baseball, disciplines him when she feels it is necessary, and takes him to church, among other things. Although no one disputes the love I.O. has for mother, the evidence does not compel a finding that mother occupies a similar role. (See *In re I.W.*, *supra*, 180 Cal.App.4th at p. 1528.) The juvenile court reasonably concluded that the parental role was occupied only by Ms. S.

Furthermore, even assuming mother had demonstrated the existence of a beneficial parental relationship, the juvenile court did not abuse its discretion by determining that the benefits of adoption outweighed the benefits of maintaining I.O.'s relationship with mother. I.O. suffered severe injuries as a result of a rollover accident caused by mother's heavy drinking, whether she was the driver or not. Although mother then began treatment for her substance abuse, it was not clear she succeeded in rehabilitation, despite an extended reunification period. Mother could not document her attendance and progress in early substance abuse classes, would disappear from CFS, and repeatedly failed to show up for drug testing, including five times in the six month-period leading up to the trial court's finding that considering termination of parental rights was in I.O.'s best interest. It is not the case that mother "did everything that [she] was asked to do," as she stated at the section 366.26 hearing. In contrast, Ms. S demonstrated that she was ready, willing, and able to provide I.O. with a safe, stable, and loving home, and had already done so for over two years. Although mother emphasizes I.O.'s statements to her such as "I love you, Mom" and her attendance at his baseball games, family gatherings, and school-related activities, I.O. also expressed love for Ms. S and rated his desire to be adopted by her at a 10 out of 10. In view of the entire record before us, we find no abuse of discretion here.

III. DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAPHAEL

J.

We concur:

SLOUGH

Acting P. J.

MENETREZ

J.